



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 11, 2004

Mr. Brad Norton
Assistant City Attorney
Law Department
City of Austin
P. O. Box 1088
Austin, Texas 78767-8845

OR2004-8595

Dear Mr. Norton:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 210873.

The City of Austin (the "city") received a request for information pertaining to the "payment of Assignment Pay for Spanish speaking firefighters." You claim that portions of the requested information are excepted from disclosure pursuant to section 552.103 of the Government Code. We have considered the exception you claim and have reviewed the submitted representative sample documents.¹

Section 552.103 of the Government Code provides in part:

(a) Information is excepted from [required public disclosure] if it is information relating to litigation of a civil or criminal nature to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party.

¹ We assume that the representative sample of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach and, therefore, does not authorize the withholding of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

....

(c) Information relating to litigation involving a governmental body or an officer or employee of a governmental body is excepted from disclosure under Subsection (a) only if the litigation is pending or reasonably anticipated on the date that the requestor applies to the officer for public information for access to or duplication of the information.

Gov't Code § 552.103(a), (c). The city maintains the burden of providing relevant facts and documents to show that section 552.103 is applicable in this situation. The test for meeting this burden is a showing by the city that (1) litigation was pending or reasonably anticipated on the date that it received this request, and (2) the information at issue is related to that pending or anticipated litigation. *See Univ. of Tex. Law Sch. v. Tex. Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, no pet.); *see also Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). The city must meet both prongs of this test for the information at issue to be excepted from disclosure pursuant to section 552.103.

You indicate, and provide documentation showing, that the requestor filed an administrative appeal concerning his indefinite suspension with the city's civil service commission prior to the date that the city received this request for information. We note that civil service appeals are governed by chapter 143 of the Local Government Code. *See Local Gov't Code* § 143.057. This office has determined that such appeal proceedings constitute litigation for purposes of section 552.103. *Cf. Open Records Decision No. 588* (1991). Further, you state that the information at issue relates to this pending administrative litigation. Based on your representations and our review of the submitted information, we find that the city has adequately demonstrated that litigation was pending on the date that it received this request for information and that the information at issue is related to that pending litigation. Thus, we agree that section 552.103 is applicable to the information at issue.

We note, however, that once information has been obtained by all parties to the pending litigation through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. *See Open Records Decision Nos. 349* (1982), *320* (1982). Thus, information that has either been obtained from or provided to the opposing party in the pending litigation is generally not excepted from disclosure under section 552.103(a) and must be disclosed.² *See Attorney General Opinion MW-575* (1982); *see also Open Records Decision No. 350* (1982). In this regard, we note that portions of the information at issue have been obtained by the opposing party in this matter. Accordingly, with the exception of the information that has been obtained by the opposing party in this matter, the city may

² We further note that the applicability of section 552.103(a) ends once the litigation has been concluded.

withhold the information at issue pursuant to section 552.103 of the Government Code. The city must release the remaining submitted information to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).


If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this

ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "Ronald J. Bounds". The signature is fluid and cursive, with the first name "Ronald" and last name "Bounds" clearly distinguishable.

Ronald J. Bounds
Assistant Attorney General
Open Records Division

RJB/krl

Ref: ID# 210873

Enc. Marked documents

c: Mr. Chuck Catt
420 Deer Run
Wimberley, Texas 78676
(w/o enclosures)